

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCO HEYWARD,
Plaintiff,

v.

UNITED STATES GOVERNMENT,
Defendant.

Case No. 15-cv-04254-KAW

**ORDER GRANTING AS UNOPPOSED
MOTION FOR EXTENSION OF TIME
TO FILE AMENDED COMPLAINT;
TERMINATING MOTION TO DISMISS
AS MOOT**

Re: Dkt. Nos. 10, 26

On March 14, 2016, pro se plaintiff Marco Heyward filed a "motion for extension of time to file amended complaint." (Dkt. No. 26.) The Government has not filed an opposition to the motion, and the time for doing so has passed. *See* Civil L.R. 7-3. Accordingly, the motion, construed as a motion for leave to file an amended complaint, is granted as unopposed. *See* Judge Westmore's General Standing Order ¶ 22 ("The failure of the opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute consent to the granting of the motion."). The First Amended Complaint docketed as document number 28 is now the operative complaint and is deemed filed as of the date of this order. The pending motion to dismiss is TERMINATED AS MOOT. Should the Government move to dismiss the First Amended Complaint, it shall be sure to address why equitable tolling would not apply in this case given that the action Plaintiff previously filed, *Heyward v. United States Government*, No. 14-cv-5114-KAW, appears to have been filed within the applicable statute of limitations. *See U.S. v. Kwai Fun Wong*, 135 S. Ct. 1624, 1639 (2015) ("[W]e hold that the FTCA's time bars are nonjurisdictional and subject to equitable tolling."). If the Government does not file a motion to dismiss the First Amended Complaint, the Court will hold a case management conference in this

case on April 26, 2016 at 1:30 p.m.

IT IS SO ORDERED.

Dated: 04/04/2016


KANDIS A. WESTMORE
United States Magistrate Judge

United States District Court
Northern District of California